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IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 19

Office Supreme Court, U.S.

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HAROLD FAHY and WILLIAM ARNOLD,
Petitioners,

versus

STATE OF CONNECTICUT,
Respondent.

REPLY BRIEF OF PETITIONER HAROLD FAHY

FRANCIS J. McNAMARA, JR.
One Atlantic Street
Stamford, Connecticut
Counsel for Petitioner Fahy

RAYMOND T. BENEDICT
JOHN F. SPINDLER
SAMUEL V. SCHOONMAKER, III
CUMMINGS & LOCKWOOD
Of Counsel

IN THE
Supreme Court of the United States

OCTOBER TERM 1962

HAROLD FAHY and WILLIAM ARNOLD,
Petitioners,

vs.

STATE OF CONNECTICUT,
Respondent.

No. 449

REPLY BRIEF OF PETITIONER HAROLD FAHY

Argument

I.

With respect to Point 1 of respondent's brief, we wish merely to point out that the hypothetical case assumed by respondent is based on an erroneous characterization of the petitioner's position. As pointed out on pages 7-9 of the Petition for Certiorari, petitioner contends that where, as here, the fruits of an illegal search and seizure are offered by the prosecution for the purpose of establishing guilt and are admitted, considered and relied on by the trier of fact as evidence tending to establish the guilt of the accused, the conviction must be reversed.

II.

At p. 4 of its Brief, respondent asserts that *Kotteakos v. United States*, 328 U. S. 750 involved "... the admission of certain evidence that was held to have been illegally ob-

tained . . ." and cites the case as authority for the proposition that an error of constitutional dimension is nonetheless within the purview of the federal harmless error rule (presently Fed. R. Crim. P. 52).

Kotteakos did not involve illegally obtained evidence.

No constitutional question was involved.

Moreover, the court observed by way of dicta that:

"If, when all is said and done, the conviction is sure that the error did not influence the jury, or had but slight effect, the verdict and judgment should stand, *except perhaps where the departure is from a constitutional norm or a specific command of Congress.*" 328 U. S. 750, 764-765. (Emphasis Supplied)

Conclusion

Since illegally obtained evidence was introduced by the prosecution and considered and relied upon by the trial court in reaching its verdict petitioner's conviction must be reversed.

Respectfully submitted,

FRANCIS J. McNAMARA, JR.
Counsel for Petitioner Fahy